



California Fair Political Practices Commission

January 28, 1986

David M. Kennedy
City Attorney
City of Salinas
200 Lincoln Avenue
Salinas, CA 93901

Re: Your Request for Advice
Our File No. I-86-026

Dear Mr. Kennedy:

This is in response to your letter dated January 2, 1986 seeking clarification of the Commission's advice letter to Michael D. Martello, Assistant City Attorney of the City of Thousand Oaks, dated October 21, 1985 (A-85-190). In that letter, we addressed the issue of what it means for an official to use his official position to influence a governmental decision. We concluded, based upon the facts provided in that request for advice, that a planning commissioner who is hired as an attorney to provide legal advocacy services for a private party/applicant (presuming the commissioner has received or has been promised, \$250 or more in income from the client) cannot meet with planning staff regarding a decision which is before the commissioner's agency, regardless of whether the matter is scheduled to come before the commission itself. You have questioned whether our advice was based on the conclusion that the planning staff in Thousand Oaks was staff of the Planning Commission rather than the City. You have indicated that in Salinas, the planning staff is part of the City Planning Department, and that the duties of the Planning Commission are substantially similar to those of Thousand Oaks with the following exceptions:

1. Commissioners are selected from those persons who have submitted applications pursuant to the Maddy Act (Gov. Code Section 54970). While each councilperson receives a copy of each application and can make recommendations, a committee of two reviews the application and makes its recommendation to the

Mayor who appoints subject to the concurrence of the majority of the council. It is not generally true that a close relationship exists between any particular Commissioner and Councilperson.

2. Concerning planning issues, the Commission does not direct staff activities or work. The staff/commission relationship is described in a written handout, reading in part as follows:

RELATIONSHIPS

A. The Staff

Within the framework of the council/manager system of local government, such as Salinas, department heads work for and through the City Manager. The Manager's responsibility is to carry out the desires of the City Council and to implement council directions. A department is an extension of the office of the City Manager and thus has primary responsibility to satisfy the demands, goals, and objectives of the City Council as directed by the City Manager. The planning department, in addition to being subordinate to the City Manager, is responsible for providing technical and administrative assistance to the Planning Commission.

The Director of Development, Chief of Planning and the Zoning Administrator are not employees of the Commission, nor do they take unlimited direction from the Commission. The professional staff furnishes information, technical advice, and administrative assistance to the Commission within the limits of available resources and discretion allocated through the City Manager.

The Commission is entitled to request and receive from all public officials, including department heads of Fire, Police, Public Works, Parks and Recreation, within a reasonable time, such available information as may be required for the work of the

Commission. This also applies to the City Attorney.

DISCUSSION

The Political Reform Act (the "Act")^{1/} provides that a public official may not make, participate in, or use his official position to influence a governmental decision in which he has a financial interest. Section 87100. An official has a financial interest in a decision when it is reasonably foreseeable that the decision will have a material financial effect on, among other interests, a source of income to the official of \$250 or more in the 12 months preceding the decision. Section 87103(c).

Accordingly, a commissioner should not make, participate in, or use his or her official position to influence a governmental decision which could have a material financial effect on any person who has paid, or promised to pay, the commissioner \$250 or more in the 12 months preceding the decision.^{2/}

In the advice letter you refer to, we indicated that a planning commissioner may not, on behalf of a client, contact or otherwise interact with planning staff for the purpose of influencing a decision regardless of whether the matter is scheduled to come before the planning commission. We pointed in particular to regulation Section 18700.1(a) which provides:

With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code and all regulatory references are to Title 2, Division 6 of the California Administrative Code.

^{2/} Income of an individual is defined in the Act to include the individual's pro rata share of any income to a business entity in which the individual has a 10% or greater ownership interest. Section 82030(a).

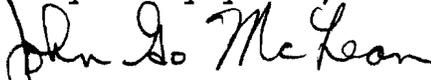
David M. Kennedy
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attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.

We can see no significant distinction between the situation in Salinas and the situation in Thousand Oaks. The planning staff in Thousand Oaks, as in Salinas, is part of the City Planning Department. As indicated in the advice letter to Thousand Oaks, the Planning Commission, as an agency, includes the planning staff of the City. Accordingly, a planning commissioner may not contact or otherwise attempt to influence planning staff concerning a pending matter on behalf of a client, regardless of whether the matter is scheduled to come before the commission. The commissioner may, however, contact planning staff regarding actions which are solely ministerial, secretarial, manual or clerical. Section 18700.1(d)(1).

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



John G. McLean
Counsel
Legal Division

JGM:plh



City of Salinas

OFFICE OF THE CITY ATTORNEY • 200 Lincoln Avenue • Salinas, California 93501 • (408) 758-7256

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January 2, 1986

Kathy Donovan
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804-0807

Re: Request for Formal Written Advice Pursuant to
2 Cal. Adm. Code Section 18329

Dear Ms. Donovan:

Pursuant to our telephone conversation of December 30, 1985, I am requesting a clarification of FPPC's advice letter A-85-190, dated October 21, 1985, addressed to Michael D. Martello, Assistant City Attorney of the City of Thousand Oaks with particular reference to the 1st question asked relating to Commissioner Masci (see page 3 of the advice letter) and the 2nd general question asked (see page 5 of the advice letter).

It would appear from the advice letter that the above questions were answered as they were because, under the facts as presented by Thousand Oaks, FPPC concluded that the planning staff was the staff of the Planning Commission and thus a part of the agency, the Planning Commission.

The question I have is to what extent are there FPPC guidelines to assist in determining if the city staff assigned to a commission is the staff of that commission.

In Salinas, the duties of the Planning Commission are substantially similar to those of Thousand Oaks, with the following exceptions:

1. Commissioners are selected from those persons who have submitted applications pursuant to the Maddy Act (Gov. Code 54970). While each council person receives a copy of each application and can make recommendations, a committee of two reviews the application and makes its recommendation to the Mayor who appoints subject to the concurrence of the majority of the council. It is not generally true that a close relationship exists between any particular Commissioner and Councilperson.

2. Concerning planning issues, the Commission does not direct staff activities or work. The staff/commission relationship is described in a written handout, reading in part as follows:

RELATIONSHIPS

A. The staff

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The Director of Development, Chief of Planning, and the Zoning Administrator are not employees of the Commission, nor do they take unlimited direction from the Commission. The professional staff furnishes information, technical advice, and administrative assistance to the Commission within the limits of available resources and discretion allocated through the City Manager.

The Commission is entitled to request and receive from all public officials, including department heads of Fire, Police, Public Works, Parks and Recreation, within a reasonable time, such available information as may be required for the work of the Commission. This also applies to the City Attorney.

Many factors are utilized by the City in selecting its Commissioners. The Council seeks to select people from all areas of the City with a fair balance of men and women and ethnic background. The Council also likes at least one Commissioner to be somewhat familiar with the subject matter of the Commission, be it aviation with the Airport Commission or land use with the Planning Commission.

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Kathy Donovan
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Advice letter A-85-190 could seriously impact the ability of the Council to select a person knowledgeable in land use to the Planning Commission unless that advice letter is strictly limited to the facts as presented by Thousand Oaks.

Very truly yours,

A handwritten signature in cursive script that reads "David M. Kennedy". The signature is written in dark ink and has a long, sweeping tail that extends to the right.

DAVID M. KENNEDY
City Attorney

DMK:jb



California Fair Political Practices Commission

January 7, 1985

David M. Kennedy
Salinas City Attorney
200 Lincoln Avenue
Salinas, CA 93901

Re: 86-026

Dear Mr. Kennedy:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
Counsel
Legal Division

KED:plh